CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCPAL BENCH - COURT NO. 1

Service Tax Appeal No. 51152 of 2016

(Arising out of Order-in-Original No. 33/PC/ST/BPL-ST/2015 dated 31.12.2015 passed by the Principal Commissioner, Customs, Central Excise & Service Tax, Bhopal)

M/s. Synergy Engineers Group Pvt Ltd. **.... Appellant**
97, Elegant Estate,
Near Mother Teressa School,
Kolar Road, Bhopal (MP)

VERSUS

Principal Commissioner, Customs,
Central Excise & Service Tax,
Bhopal **....Respondent**
48, Administrative Area, Arora Hills,
Hoshangabad Road, Bhopal (MP)

APPEARANCE:
Shri Jitender Singh, Advocate for the Appellant
Shri Rajeev Kapoor, Authorized Representative of the Department

AND

Service Tax Appeal No. 51916 of 2016

(Arising out of Order-in-Original No. 33/PC/ST/BPL-ST/2015 dated 31.12.2015 passed by the Principal Commissioner, Central Excise, Customs & Service Tax, Bhopal)

The Principal Commissioner,
Central Excise, Bhopal (M.P.) **..... Appellant**

VERSUS

M/s. Synergy Engineers Group
Pvt Ltd., Bhopal (M.P.) **....Respondent**

APPEARANCE:
Shri Rajeev Kapoor, Authorized Representative of the Department
Shri Jitender Singh, Advocate for the Respondent

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing/Decision: 06.02.2023

FINAL ORDER NO. 50119-50120 /2023

JUSTICE DILIP GUPTA

Service Tax Appeal No. 51152 of 2016 has been filed by M/s. Synergy Engineers Group Pvt Ltd[1] to assail that part of the order dated December 31, 2015 passed by the Principal Commissioner, Customs, Central Excise and Service Tax, Bhopal[2] which confirms that the demand of service tax amounting Rs.44,42,823/- and Rs.01,05,625/- with interest.

2. **Service Tax Appeal No. 51916 of 2016** has been filed by the Department to assail that part of the order passed by the Principal Commissioner which drops the demand of service tax for the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act, 1994[3].

3. The assessee provided 'consulting engineer' services defined under section 65(31) of the Finance Act and made taxable under section 65 (105)(g) of the Finance Act. The assessee also entered into an agreement on February 14, 2010 with **M/s. Lion Engineering Consultant[4],** which was engaged in the business of providing consultancy services to the Government of Madhya

1. the assessee
2. the Principal Commissioner
3. the Finance Act
4. the main consultant

Pradesh. Under this agreement, the main consultant decided to sublet work to the appellant and permitted him to work as a sub-consultant in accordance with the terms set out in the agreement.

4. The dispute in the present appeals relates to the services provided by the assessee as a main consultant as also to the services provided by the assessee as a sub-consultant of the main consultant.

5. The Principal Commissioner has confirmed the demand of Rs.44,42,823/- on the services provided by the assessee as a sub-consultant to the main consultant, and an amount of Rs.01,05,625/- on the services provided by the assessee as the main consultant. As noted above, the assessee has filed this appeal to assail that part of the order passed by the Principal Commissioner that confirms the demand of service tax, while the Department has filed the appeal to assail that part of the order of the Principal Commissioner which drops the demand for the extended period of limitation.

6. So far as the confirmation of demand for the services provided by the assessee as a sub-consultant to the main consultant is concerned, the issue has been decided by a Larger Bench of the Tribunal in **Commissioner of Service Tax, New Delhi** vs. **Melange Developers Private Limited**[5]. The Larger Bench answered the reference holding that a sub-contractor would be liable to pay service tax even if the main contractor discharged service tax liability on the activity undertaken by the sub-contractor in pursuance of the contract.

---

5. 2020 (33) G.S.T.L. 116 (Tri.-LB)

7. In coming to the aforesaid conclusion, the Larger Bench placed reliance on the provisions of sections 66, 68 and 94 of the Finance Act. The Larger Bench also noted that the matter had been referred because of conflicting decisions of the Tribunal on the issue as to whether a sub-contractor was required to pay service tax even if the main contractor had discharged the service tax liability.

8. The reasons given by the Larger Bench to hold that a sub-contractor would be liable to pay service tax even if the main contractor has discharged service tax liability would also be applicable in the case of a sub-consultant.

9. In view of the aforesaid decision of the Larger Bench of the Tribunal, it has to be held that a sub-consultant would have to discharge service tax liability even if the main consultant has discharged the service tax liability.

10. In such circumstances, the decision taken by the Principal Commissioner to confirm the demand for the normal period of limitation does not suffer from any illegality.

11. The next issue that is required to be decided is as to whether the Principal Commissioner was justified in holding that the extended period of limitation contemplated under the first proviso to section 73(1) of the Finance Act could not have been invoked in the facts and circumstances of the case.

12. In this connection, it would be appropriate to reproduce the findings recorded by the Principal Commissioner on this aspect and they are as follows:

> "41. Another allegation against the Notice was that they had not submitted any ST-3 returns during the period 2009-10. On enquiry the Department had found that during the period 2009-10 the Noticee had provided service to LEC only and as LEC had disposed of the Service Tax liability, the Notice took Service Tax registration on 10.11.2010, the time when they started getting independent contracts as consulting engineer. On going through the ST- 3 returns filed by the Noticee, I find that they have declared their total income in their returns in column (a)(i) and shown the value of exempted services in column c(li) for the period from April 2011 to September 2011 (Rs. 2,32,90,725/-), October 2011 to March 2012 (Rs. 2,32,26,472/-), April 2012 to June 2012 (Rs. 92,88,346). Thereafter, they have shown gross amount recovered by them in column B1.1 and shown the value of exempted services provided by them in column B1.9 in the ST-3 return filed for the period July to September 2012 (Rs. 67,26,126/-) and the plea of the Notice in this regard appears correct that there is no intent to suppress facts on their part as they had regularly declared the value of exempted services also in their ST-3 returns and as such the proviso to Section 73(1) of the Act are can also not be invoked in this case. Consequently, the demand for normal period i.e. from July 2012 to March 2013 is confirmed. I am refraining from imposing any penalty on the Notice as the issue is only of technical nature and there is no loss of revenue to the exchequer."

13. It is seen that the Principal Commissioner noted that the assessee in the ST-3 Returns had disclosed the taxable income and also disclosed the exempted services for the relevant period and therefore, the Department could not urge that there was suppression of facts by the assessee with an intent to evade payment of service tax.

14. It also needs to be noted that at the relevant time there were conflicting decisions of the Tribunal regarding payment of service tax by a sub-contractor or a sub-consultant and it is only when the Larger Bench decided the issue on May 23, 2019 that it was settled that a sub-contractor would have to discharge the service tax liability even if the main contractor had discharged the service tax liability.

15. The issue as to whether the extended period of limitation could be invoked in such a situation when there are conflicting views of the Tribunal on a particular issue has been considered by the Supreme Court in various decisions.

16. In **Jaiprakash Industries Ltd.** vs. **Commissioner of Central Excise, Chandigarh**[6], the Supreme Court held that when there are divergent views of High Courts, there can be a bona fide doubt as to whether the activity would amount to manufacture and in such circumstances it cannot be urged that there was mis-statement or suppression of facts with intent to evade payment of duty.

17. In **Commissioner of Central Excise, Vapi** vs. **Kolety Gum Industries**[7]**,** the Supreme Court held that when there are conflicting judgments of the Tribunal, the assessee may have a bona fide belief that service tax is not payable and in such a situation, the extended period of limitation cannot be invoked by the Department.

18. In **Continental Foundation Joint Venture** vs. **Commissioner of Central Excise, Chandigarh**[8], the Supreme Court held that when there is a scope for entertaining a doubt about the view to be taken, the extended period of limitation cannot be invoked.

19. The finding, therefore, that has been recorded by the Principal Commissioner for denying the invocation of the extended period of limitation does not suffer from any illegality.

---

6. 2002 (146) E.L.T. 481 (S.C.)
7. 2016 (335) E.L.T. 581 (S.C.)
8. 2007 (216) E.L.T. 177 (S.C.)

20. In this view of the matter, the appeals filed by the assessee and the Department deserve to be dismissed and are dismissed.

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana